

AMENDED IN SENATE APRIL 20, 2009

AMENDED IN SENATE APRIL 1, 2009

**SENATE BILL**

**No. 58**

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**Introduced by Senator Aanestad**

January 20, 2009

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An act to amend Sections 800, 803.1, 805.5, ~~809, 809.1, 809.2, 809.3,~~ and 2027 of, and to add Sections 805.3, ~~809.04, 809.07, 809.08, 809.09,~~ ~~809.15,~~ and 2191.5 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 58, as amended, Aanestad. Peer review: reporting.

~~(1) Existing~~

*Existing* law provides for the professional review of specified healing arts licentiates through a peer review process conducted by peer review bodies, as defined.

This bill would require peer review bodies to annually report to the Medical Board of California on their peer review activities involving licensees of that board and to comply with any requests from the board for more detailed information.

The bill would require peer review bodies of health care facilities or clinics to obtain external peer review from an external peer review organization for the evaluation or investigation of an applicant, privilege holder, or member of the medical staff of the facility or clinic in specified circumstances and would encourage those peer review bodies to obtain that external review in certain other circumstances. The bill would require the external peer review organization to meet certain requirements, as specified, and would authorize the organization to establish and collect reasonable fees for its services.

~~The bill would require a peer review body to respond to the request of another peer review body and produce the records requested concerning a licentiate under review. The bill would specify that the records produced pursuant to this provision are not subject to discovery, a subpoena, or a subpoena duces tecum, and are not admissible as evidence in a court of law in this state.~~

~~Existing law prohibits the exclusion of relevant evidence in a criminal proceeding except as provided by a statute enacted by a  $\frac{2}{3}$  vote of the Legislature.~~

~~Because this bill would provide that certain information is not admissible in a court proceeding, it requires a  $\frac{2}{3}$  vote of the membership of each house of the Legislature.~~

~~(2) Existing law requires the governing body of acute care hospitals to give great weight to the actions of peer review bodies and authorizes the governing body to direct the peer review body to investigate in specified instances. Where the peer review body fails to take action in response to that direction, existing law authorizes the governing body to take action against a licentiate.~~

~~This bill would prohibit a member of a medical or professional staff from being required to alter or surrender staff privileges, status, or membership solely due to the termination of a contract between that member and a health care facility. The bill would specify that a peer review body is entitled to review and make recommendations to the governing body of a health care facility regarding the quality implications of the selection, performance evaluation, and any change in the retention or replacement of licensees with whom the facility has a contract and would prohibit the governing body from unreasonably withholding approval of those recommendations, as specified.~~

~~(3) Under existing law, specified persons are required to file a report, designated as an “805 report,” with a licensing board if a peer review body takes one of several specified actions against a person licensed by that board. Existing law provides various due process rights for licentiates who are the subject of a final proposed disciplinary action of a peer review body, including authorizing a licensee to request a hearing concerning that action.~~

~~With respect to physicians and surgeons, this bill would require peer review bodies to administer an early detection and resolution program (EDR) in which a peer review body would, where it deems appropriate, allow a physician and surgeon to complete certain training, observation, or consultation requirements instead of being subject to disciplinary~~

~~action and an 805 report. The bill would delay the physician and surgeon's right to a hearing concerning a final proposed action pending his or her completion of EDR. The bill would make the proceedings or records of an EDR assessment or training program inadmissible in a court of law in this state.~~

~~Existing law prohibits the exclusion of relevant evidence in a criminal proceeding except as provided by a statute enacted by a  $\frac{2}{3}$  vote of the Legislature.~~

~~Because this bill would provide that certain information is not admissible in a court proceeding, it requires a  $\frac{2}{3}$  vote of the membership of each house of the Legislature.~~

~~Under existing law, a hearing concerning a final proposed disciplinary action must be held before either an arbitrator mutually acceptable to the licensee and the peer review body or a panel of unbiased individuals, as specified. Existing law prohibits a hearing officer presiding at a hearing held before a panel from, among other things, gaining direct financial benefit from the outcome.~~

~~This bill would give the licensee the choice of having the hearing before a mutually acceptable arbitrator or a panel of unbiased individuals. The bill would require the hearing officer presiding at a hearing before a panel to meet certain requirements and to disclose all actual and potential conflicts. The bill would specify that the hearing officer is entitled to determine the procedure for presenting evidence and argument and would give the hearing officer authority to make all rulings pertaining to law, procedure, or the admissibility of evidence.~~

~~Existing law gives parties at the hearing certain rights, including the right to present and rebut evidence. Existing law requires the peer review body to adopt written provisions governing whether a licensee may be represented by an attorney.~~

~~This bill would give both parties the right to be represented by an attorney, except as specified.~~

~~(4) Existing~~

~~*Under existing law, specified persons are required to file a report, designated as an "805 report," with a licensing board if a peer review body takes one of several specified actions against a person licensed by that board. Existing law requires the Medical Board of California to maintain a central file of its licensees containing, among other things, disciplinary information reported through 805 reports and authorizes licensees to submit additional exculpatory or explanatory statements, as specified. Existing law requires the board to disclose an 805 report*~~

to specified health care entities and requires the board to post on the Internet, and to disclose to inquiring members of the public, certain hospital disciplinary actions.

The bill would require the board to include the exculpatory or explanatory statement submitted by licensees regarding 805 reports in disclosures or postings of those reports or of hospital disciplinary actions. The bill would prohibit the board from including certain summary suspension information reported through an 805 report in a licensee's central file, except as specified. The bill would also prohibit the board from reporting or posting, and would require the board to remove from a licensee's central file, certain disciplinary information if a court reverses a disciplinary action reported pursuant to Section 805 or if the board's independent investigation exonerates the licensee from the charges forming the basis of the disciplinary action.

~~(5) Existing~~

*Existing* law requires the Medical Board of California to adopt and administer standards for the continuing education of licensed physicians and surgeons.

This bill would require the board to adopt and administer standards allowing a physician and surgeon to receive credit for up to 10 hours of continuing education each year for participating in a peer review body without compensation.

Vote:  $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. The Legislature hereby finds and declares all of~~
- 2     ~~the following:~~
- 3     ~~(a) The process that physicians and hospitals, among other~~
- 4     ~~entities, use to monitor the standard of care for medical practice~~
- 5     ~~is known as "peer review."~~
- 6     ~~(b) Peer review is described in Section 805 of the Business and~~
- 7     ~~Professions Code. It requires a peer review body to report an~~
- 8     ~~adverse action taken against a health care provider for medical~~
- 9     ~~disciplinary cause or reason to the provider's licensing entity. This~~
- 10    ~~report can lead to disciplinary action by the licensing entity and~~
- 11    ~~may impact future credentialing.~~
- 12    ~~(c) Peer review performed at hospitals works well in most cases;~~
- 13    ~~but is sometimes dysfunctional and occasionally dangerous. It is~~

1 frequently expensive and time consuming. It can be damaging to  
2 the professional careers of the health care providers involved, even  
3 those who are cleared of any wrongdoing.

4 (d) ~~In light of the occasional failures of the peer review process~~  
5 ~~in its purpose to ensure the quality and safety of medical care in~~  
6 ~~California, reform of the peer review process is necessary.~~

7 ~~SEC. 2.~~

8 *SECTION 1.* Section 800 of the Business and Professions Code  
9 is amended to read:

10 800. (a) The Medical Board of California, the Board of  
11 Psychology, the Dental Board of California, the Osteopathic  
12 Medical Board of California, the State Board of Chiropractic  
13 Examiners, the Board of Registered Nursing, the Board of  
14 Vocational Nursing and Psychiatric Technicians, the State Board  
15 of Optometry, the Veterinary Medical Board, the Board of  
16 Behavioral Sciences, the Physical Therapy Board of California,  
17 the California State Board of Pharmacy, and the Speech-Language  
18 Pathology and Audiology Board shall each separately create and  
19 maintain a central file of the names of all persons who hold a  
20 license, certificate, or similar authority from that board. Each  
21 central file shall be created and maintained to provide an individual  
22 historical record for each licensee with respect to the following  
23 information:

24 (1) Any conviction of a crime in this or any other state that  
25 constitutes unprofessional conduct pursuant to the reporting  
26 requirements of Section 803.

27 (2) Any judgment or settlement requiring the licensee or his or  
28 her insurer to pay any amount of damages in excess of three  
29 thousand dollars (\$3,000) for any claim that injury or death was  
30 proximately caused by the licensee's negligence, error or omission  
31 in practice, or by rendering unauthorized professional services,  
32 pursuant to the reporting requirements of Section 801 or 802.

33 (3) Any public complaints for which provision is made pursuant  
34 to subdivision (b).

35 (4) (A) Disciplinary information reported pursuant to Section  
36 805.

37 (B) Notwithstanding subparagraph (A), with respect to a  
38 physician and surgeon licensed by the Medical Board of California,  
39 all of the following shall apply:

1 (i) If a court reverses a disciplinary action reported pursuant to  
2 Section 805 or if the board's independent investigation exonerates  
3 the licensee from the charges forming the basis of the reported  
4 disciplinary action, the board shall remove the corresponding  
5 disciplinary information described in subparagraph (A) from the  
6 licensee's central file.

7 (ii) The board shall not include a summary suspension of staff  
8 privileges, employment, or membership reported pursuant to  
9 Section 805 in the licensee's central file unless the board confirms,  
10 by independent investigation, that the suspension is supported by  
11 substantial evidence of risk to patients.

12 (b) Each board shall prescribe and promulgate forms on which  
13 members of the public and other licensees or certificate holders  
14 may file written complaints to the board alleging any act of  
15 misconduct in, or connected with, the performance of professional  
16 services by the licensee.

17 If a board, or division thereof, a committee, or a panel has failed  
18 to act upon a complaint or report within five years, or has found  
19 that the complaint or report is without merit, the central file shall  
20 be purged of information relating to the complaint or report.

21 Notwithstanding this subdivision, the Board of Psychology, the  
22 Board of Behavioral Sciences, and the Respiratory Care Board of  
23 California shall maintain complaints or reports as long as each  
24 board deems necessary.

25 (c) The contents of any central file that are not public records  
26 under any other provision of law shall be confidential except that  
27 the licensee involved, or his or her counsel or representative, shall  
28 have the right to inspect and have copies made of his or her  
29 complete file except for the provision that may disclose the identity  
30 of an information source. For the purposes of this section, a board  
31 may protect an information source by providing a copy of the  
32 material with only those deletions necessary to protect the identity  
33 of the source or by providing a comprehensive summary of the  
34 substance of the material. Whichever method is used, the board  
35 shall ensure that full disclosure is made to the subject of any  
36 personal information that could reasonably in any way reflect or  
37 convey anything detrimental, disparaging, or threatening to a  
38 licensee's reputation, rights, benefits, privileges, or qualifications,  
39 or be used by a board to make a determination that would affect  
40 a licensee's rights, benefits, privileges, or qualifications. The

1 information required to be disclosed pursuant to Section 803.1  
2 shall not be considered among the contents of a central file for the  
3 purposes of this subdivision.

4 (d) The licensee may, but is not required to, submit any  
5 additional exculpatory or explanatory statement or other  
6 information that the board shall include in the central file.

7 (e) Each board may permit any law enforcement or regulatory  
8 agency when required for an investigation of unlawful activity or  
9 for licensing, certification, or regulatory purposes to inspect and  
10 have copies made of that licensee's file, unless the disclosure is  
11 otherwise prohibited by law.

12 These disclosures shall effect no change in the confidential status  
13 of these records.

14 ~~SEC. 3.~~

15 *SEC. 2.* Section 803.1 of the Business and Professions Code  
16 is amended to read:

17 803.1. (a) Notwithstanding any other provision of law, the  
18 Medical Board of California, the Osteopathic Medical Board of  
19 California, and the California Board of Podiatric Medicine shall  
20 disclose to an inquiring member of the public information regarding  
21 any enforcement actions taken against a licensee by either board  
22 or by another state or jurisdiction, including all of the following:

23 (1) Temporary restraining orders issued.

24 (2) Interim suspension orders issued.

25 (3) Revocations, suspensions, probations, or limitations on  
26 practice ordered by the board, including those made part of a  
27 probationary order or stipulated agreement.

28 (4) Public letters of reprimand issued.

29 (5) Infractions, citations, or fines imposed.

30 (b) Notwithstanding any other provision of law, in addition to  
31 the information provided in subdivision (a), the Medical Board of  
32 California, the Osteopathic Medical Board of California, and the  
33 California Board of Podiatric Medicine shall disclose to an  
34 inquiring member of the public all of the following:

35 (1) Civil judgments in any amount, whether or not vacated by  
36 a settlement after entry of the judgment, that were not reversed on  
37 appeal and arbitration awards in any amount of a claim or action  
38 for damages for death or personal injury caused by the physician  
39 and surgeon's negligence, error, or omission in practice, or by his  
40 or her rendering of unauthorized professional services.

1 (2) (A) All settlements in the possession, custody, or control  
2 of the board shall be disclosed for a licensee in the low-risk  
3 category if there are three or more settlements for that licensee  
4 within the last 10 years, except for settlements by a licensee  
5 regardless of the amount paid where (i) the settlement is made as  
6 a part of the settlement of a class claim, (ii) the licensee paid in  
7 settlement of the class claim the same amount as the other licensees  
8 in the same class or similarly situated licensees in the same class,  
9 and (iii) the settlement was paid in the context of a case where the  
10 complaint that alleged class liability on behalf of the licensee also  
11 alleged a products liability class action cause of action. All  
12 settlements in the possession, custody, or control of the board shall  
13 be disclosed for a licensee in the high-risk category if there are  
14 four or more settlements for that licensee within the last 10 years  
15 except for settlements by a licensee regardless of the amount paid  
16 where (i) the settlement is made as a part of the settlement of a  
17 class claim, (ii) the licensee paid in settlement of the class claim  
18 the same amount as the other licensees in the same class or  
19 similarly situated licensees in the same class, and (iii) the  
20 settlement was paid in the context of a case where the complaint  
21 that alleged class liability on behalf of the licensee also alleged a  
22 products liability class action cause of action. Classification of a  
23 licensee in either a “high-risk category” or a “low-risk category”  
24 depends upon the specialty or subspecialty practiced by the licensee  
25 and the designation assigned to that specialty or subspecialty by  
26 the Medical Board of California, as described in subdivision (f).  
27 For the purposes of this paragraph, “settlement” means a settlement  
28 of an action described in paragraph (1) entered into by the licensee  
29 on or after January 1, 2003, in an amount of thirty thousand dollars  
30 (\$30,000) or more.

31 (B) The board shall not disclose the actual dollar amount of a  
32 settlement but shall put the number and amount of the settlement  
33 in context by doing the following:

34 (i) Comparing the settlement amount to the experience of other  
35 licensees within the same specialty or subspecialty, indicating if  
36 it is below average, average, or above average for the most recent  
37 10-year period.

38 (ii) Reporting the number of years the licensee has been in  
39 practice.



1 (iii) Reporting the total number of licensees in that specialty or  
2 subspecialty, the number of those who have entered into a  
3 settlement agreement, and the percentage that number represents  
4 of the total number of licensees in the specialty or subspecialty.

5 (3) Current American Board of Medical Specialty certification  
6 or board equivalent as certified by the Medical Board of California,  
7 the Osteopathic Medical Board of California, or the California  
8 Board of Podiatric Medicine.

9 (4) Approved postgraduate training.

10 (5) Status of the license of a licensee. By January 1, 2004, the  
11 Medical Board of California, the Osteopathic Medical Board of  
12 California, and the California Board of Podiatric Medicine shall  
13 adopt regulations defining the status of a licensee. The board shall  
14 employ this definition when disclosing the status of a licensee  
15 pursuant to Section 2027.

16 (6) (A) Any summaries of hospital disciplinary actions that  
17 result in the termination or revocation of a licensee's staff  
18 privileges for medical disciplinary cause or reason.

19 (B) The Medical Board of California shall include in the  
20 information disclosed pursuant to subparagraph (A) any  
21 exculpatory or explanatory statement regarding the hospital  
22 disciplinary action provided by a licensed physician and surgeon  
23 pursuant to subdivision (d) of Section 800.

24 (C) The Medical Board of California shall not disclose the  
25 information described in subparagraph (A) with respect to a  
26 licensed physician and surgeon if a court reverses the hospital  
27 disciplinary action or if the board's independent investigation  
28 exonerates the licensee from the charges forming the basis of the  
29 hospital disciplinary action.

30 (c) Notwithstanding any other provision of law, the Medical  
31 Board of California, the Osteopathic Medical Board of California,  
32 and the California Board of Podiatric Medicine shall disclose to  
33 an inquiring member of the public information received regarding  
34 felony convictions of a physician and surgeon or doctor of podiatric  
35 medicine.

36 (d) The Medical Board of California, the Osteopathic Medical  
37 Board of California, and the California Board of Podiatric Medicine  
38 may formulate appropriate disclaimers or explanatory statements  
39 to be included with any information released, and may by  
40 regulation establish categories of information that need not be

1 disclosed to an inquiring member of the public because that  
2 information is unreliable or not sufficiently related to the licensee's  
3 professional practice. The Medical Board of California, the  
4 Osteopathic Medical Board of California, and the California Board  
5 of Podiatric Medicine shall include the following statement when  
6 disclosing information concerning a settlement:

7  
8 “Some studies have shown that there is no significant correlation  
9 between malpractice history and a doctor's competence. At the  
10 same time, the State of California believes that consumers should  
11 have access to malpractice information. In these profiles, the State  
12 of California has given you information about both the malpractice  
13 settlement history for the doctor's specialty and the doctor's history  
14 of settlement payments only if in the last 10 years, the doctor, if  
15 in a low-risk specialty, has three or more settlements or the doctor,  
16 if in a high-risk specialty, has four or more settlements. The State  
17 of California has excluded some class action lawsuits because  
18 those cases are commonly related to systems issues such as product  
19 liability, rather than questions of individual professional  
20 competence and because they are brought on a class basis where  
21 the economic incentive for settlement is great. The State of  
22 California has placed payment amounts into three statistical  
23 categories: below average, average, and above average compared  
24 to others in the doctor's specialty. To make the best health care  
25 decisions, you should view this information in perspective. You  
26 could miss an opportunity for high-quality care by selecting a  
27 doctor based solely on malpractice history.

28 When considering malpractice data, please keep in mind:

29 Malpractice histories tend to vary by specialty. Some specialties  
30 are more likely than others to be the subject of litigation. This  
31 report compares doctors only to the members of their specialty,  
32 not to all doctors, in order to make an individual doctor's history  
33 more meaningful.

34 This report reflects data only for settlements made on or after  
35 January 1, 2003. Moreover, it includes information concerning  
36 those settlements for a 10-year period only. Therefore, you should  
37 know that a doctor may have made settlements in the 10 years  
38 immediately preceding January 1, 2003, that are not included in  
39 this report. After January 1, 2013, for doctors practicing less than  
40 10 years, the data covers their total years of practice. You should

1 take into account the effective date of settlement disclosure as well  
2 as how long the doctor has been in practice when considering  
3 malpractice averages.

4 The incident causing the malpractice claim may have happened  
5 years before a payment is finally made. Sometimes, it takes a long  
6 time for a malpractice lawsuit to settle. Some doctors work  
7 primarily with high-risk patients. These doctors may have  
8 malpractice settlement histories that are higher than average  
9 because they specialize in cases or patients who are at very high  
10 risk for problems.

11 Settlement of a claim may occur for a variety of reasons that do  
12 not necessarily reflect negatively on the professional competence  
13 or conduct of the doctor. A payment in settlement of a medical  
14 malpractice action or claim should not be construed as creating a  
15 presumption that medical malpractice has occurred.

16 You may wish to discuss information in this report and the  
17 general issue of malpractice with your doctor.”  
18

19 (e) The Medical Board of California, the Osteopathic Medical  
20 Board of California, and the California Board of Podiatric Medicine  
21 shall, by regulation, develop standard terminology that accurately  
22 describes the different types of disciplinary filings and actions to  
23 take against a licensee as described in paragraphs (1) to (5),  
24 inclusive, of subdivision (a). In providing the public with  
25 information about a licensee via the Internet pursuant to Section  
26 2027, the Medical Board of California, the Osteopathic Medical  
27 Board of California, and the California Board of Podiatric Medicine  
28 shall not use the terms “enforcement,” “discipline,” or similar  
29 language implying a sanction unless the physician and surgeon  
30 has been the subject of one of the actions described in paragraphs  
31 (1) to (5), inclusive, of subdivision (a).

32 (f) The Medical Board of California shall adopt regulations no  
33 later than July 1, 2003, designating each specialty and subspecialty  
34 practice area as either high risk or low risk. In promulgating these  
35 regulations, the board shall consult with commercial underwriters  
36 of medical malpractice insurance companies, health care systems  
37 that self-insure physicians and surgeons, and representatives of  
38 the California medical specialty societies. The board shall utilize  
39 the carriers’ statewide data to establish the two risk categories and  
40 the averages required by subparagraph (B) of paragraph (2) of

subdivision (b). Prior to issuing regulations, the board shall convene public meetings with the medical malpractice carriers, self-insurers, and specialty representatives.

(g) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall provide each licensee with a copy of the text of any proposed public disclosure authorized by this section prior to release of the disclosure to the public. The licensee shall have 10 working days from the date the board provides the copy of the proposed public disclosure to propose corrections of factual inaccuracies. Nothing in this section shall prevent the board from disclosing information to the public prior to the expiration of the 10-day period.

(h) Pursuant to subparagraph (A) of paragraph (2) of subdivision (b), the specialty or subspecialty information required by this section shall group physicians by specialty board recognized pursuant to paragraph (5) of subdivision (h) of Section 651 unless a different grouping would be more valid and the board, in its statement of reasons for its regulations, explains why the validity of the grouping would be more valid.

~~SEC. 4.~~

*SEC. 3.* Section 805.3 is added to the Business and Professions Code, to read:

805.3. A peer review body shall annually report to the Medical Board of California on its peer review activities involving licensees of that board and shall comply with any requests from that board for more detailed information. The information reported pursuant to this section shall be kept confidential.

~~SEC. 5.~~

*SEC. 4.* Section 805.5 of the Business and Professions Code is amended to read:

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, or any health care service plan or medical care foundation, or the medical staff of the institution shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist,

1 or dentist has been denied staff privileges, been removed from a  
2 medical staff, or had his or her staff privileges restricted as  
3 provided in Section 805. The request shall include the name and  
4 California license number of the physician and surgeon,  
5 psychologist, podiatrist, or dentist. Furnishing of a copy of the 805  
6 report shall not cause the 805 report to be a public record.

7 (b) Upon a request made by, or on behalf of, an institution  
8 described in subdivision (a) or its medical staff, which is received  
9 on or after January 1, 1980, the board shall furnish a copy of any  
10 report made pursuant to Section 805. However, the board shall not  
11 send a copy of a report (1) if the denial, removal, or restriction  
12 was imposed solely because of the failure to complete medical  
13 records, (2) if the board has found the information reported is  
14 without merit, or (3) if a period of three years has elapsed since  
15 the report was submitted. This three-year period shall be tolled  
16 during any period the licensee has obtained a judicial order  
17 precluding disclosure of the report, unless the board is finally and  
18 permanently precluded by judicial order from disclosing the report.  
19 In the event a request is received by the board while the board is  
20 subject to a judicial order limiting or precluding disclosure, the  
21 board shall provide a disclosure to any qualified requesting party  
22 as soon as practicable after the judicial order is no longer in force.

23 In the event that the board fails to advise the institution within  
24 30 working days following its request for a report required by this  
25 section, the institution may grant or renew staff privileges for the  
26 physician and surgeon, psychologist, podiatrist, or dentist.

27 (c) With respect to the Medical Board of California, both of the  
28 following shall apply:

29 (1) In addition to the circumstances identified in subdivision  
30 (b), the board shall not send a copy of a report made pursuant to  
31 Section 805 if a court reverses the denial, removal, or restriction.

32 (2) The board shall include with the copy of the 805 report  
33 furnished under this section any exculpatory or explanatory  
34 statement made regarding the report pursuant to subdivision (d)  
35 of Section 800.

36 (d) Any institution described in subdivision (a) or its medical  
37 staff that violates subdivision (a) is guilty of a misdemeanor and  
38 shall be punished by a fine of not less than two hundred dollars  
39 (\$200) nor more than one thousand two hundred dollars (\$1,200).

1     ~~SEC. 6. Section 809 of the Business and Professions Code is~~  
2     ~~amended to read:~~

3     ~~809. (a) The Legislature hereby finds and declares the~~  
4     ~~following:~~

5     ~~(1) In 1986, Congress enacted the Health Care Quality~~  
6     ~~Improvement Act of 1986 (Chapter 117 (commencing with Section~~  
7     ~~11101) Title 42, United States Code), to encourage physicians to~~  
8     ~~engage in effective professional peer review, but giving each state~~  
9     ~~the opportunity to “opt-out” of some of the provisions of the federal~~  
10    ~~act.~~

11    ~~(2) Because of deficiencies in the federal act and the possible~~  
12    ~~adverse interpretations by the courts of the federal act, it is~~  
13    ~~preferable for California to “opt out” of the federal act and design~~  
14    ~~its own peer review system.~~

15    ~~(3) Peer review, fairly conducted, is essential to preserving the~~  
16    ~~highest standards of medical practice.~~

17    ~~(4) It is essential that California’s peer review system generate~~  
18    ~~a culture of trust and safety so that health care practitioners will~~  
19    ~~participate robustly in the process by engaging in critically~~  
20    ~~important patient safety activities, such as reporting incidents they~~  
21    ~~believe to reflect substandard care or unprofessional conduct and~~  
22    ~~serving on peer review, quality assurance, and other committees~~  
23    ~~necessary to protect patients.~~

24    ~~(5) It is the policy of the state that evaluation, corrective action,~~  
25    ~~or other forms of peer review only be conducted for patient safety~~  
26    ~~and the improvement of quality patient care.~~

27    ~~(6) Peer review that is not conducted fairly results in harm both~~  
28    ~~to patients and healing arts practitioners by wrongfully depriving~~  
29    ~~patients of their ability to obtain care from their chosen practitioner~~  
30    ~~and by depriving practitioners of their ability to care for their~~  
31    ~~patients, thereby limiting much needed access to care.~~

32    ~~(7) Peer review, fairly conducted, will aid the appropriate state~~  
33    ~~licensing boards in their responsibility to regulate and discipline~~  
34    ~~errant healing arts practitioners.~~

35    ~~(8) To protect the health and welfare of the people of California,~~  
36    ~~it is the policy of the State of California to exclude, through the~~  
37    ~~peer review mechanism as provided for by California law, those~~  
38    ~~healing arts practitioners who provide substandard care or who~~  
39    ~~engage in professional misconduct, regardless of the effect of that~~  
40    ~~exclusion on competition.~~

~~(9) It is the intent of the Legislature that peer review of professional health care services be done efficiently, on an ongoing basis, and with an emphasis on early detection of potential quality problems and resolutions through informal educational interventions. It is further the intent of the Legislature that peer review bodies be actively involved in the measurement, assessment, and improvement of quality and that there be appropriate oversight by the peer review bodies to ensure the timely resolution of issues.~~

~~(10) Sections 809 to 809.8, inclusive, shall not affect the respective responsibilities of the organized medical staff or the governing body of an acute care hospital with respect to peer review in the acute care hospital setting. It is the intent of the Legislature that written provisions implementing Sections 809 to 809.8, inclusive, in the acute care hospital setting shall be included in medical staff bylaws that shall be adopted by a vote of the members of the organized medical staff and shall be subject to governing body approval, which approval shall not be withheld unreasonably.~~

~~(11) (A) The Legislature thus finds and declares that the laws of this state pertaining to the peer review of healing arts practitioners shall apply in lieu of Chapter 117 (commencing with Section 11101) of Title 42 of the United States Code, because the laws of this state provide a more careful articulation of the protections for both those undertaking peer review activity and those subject to review, and better integrate public and private systems of peer review. Therefore, California exercises its right to opt out of specified provisions of the Health Care Quality Improvement Act relating to professional review actions, pursuant to Section 11111(c)(2)(B) of Title 42 of the United States Code. This election shall not affect the availability of any immunity under California law.~~

~~(B) The Legislature further declares that it is not the intent or purposes of Sections 809 to 809.8, inclusive, to opt out of any mandatory national databank established pursuant to Subchapter H (commencing with Section 11131) of Chapter 117 of Title 42 of the United States Code.~~

~~(b) For the purpose of this section and Sections 809.1 to 809.8, inclusive, “healing arts practitioner” or “licentiate” means a physician and surgeon, podiatrist, clinical psychologist, marriage and family therapist, clinical social worker, or dentist; and “peer~~

review body” means a peer review body as specified in paragraph (1) of subdivision (a) of Section 805, and includes any designee of the peer review body.

SEC. 7. Section 809.04 is added to the Business and Professions Code, to read:

809.04. (a) It is the public policy of the state that licentiates who may be providing substandard care be subject to the peer review hearing and reporting process set forth in this article.

(b) To ensure that the peer review process is not circumvented, a member of a medical or professional staff, by contract or otherwise, shall not be required to alter or surrender staff privileges, status, or membership solely due to the termination of a contract between that member and a health care facility.

(c) The peer review body of a health care facility shall be entitled to review and make recommendations to the governing body of the facility regarding the quality implications of the selection, performance evaluation, and any change in the retention or replacement of licentiates with whom the health care facility has a contract. The governing body shall not unreasonably withhold approval of those recommendations.

(d) This section shall not impair a governing body’s ability to take action against a licentiate pursuant to Section 809.05.

SEC. 8. Section 809.07 is added to the Business and Professions Code, to read:

809.07. (a) It is the policy of the state that in certain circumstances, external peer review may be necessary to promote and protect patient care in order to eliminate perceived bias, obtain needed medical expertise, or respond to other particular circumstances.

(b) A peer review body is encouraged to obtain external peer review for the evaluation or investigation of an applicant, privilege holder, or member of the medical staff in the following circumstances:

(1) Committee or department reviews that could affect a licentiate’s membership or privileges do not provide a sufficiently clear basis for action or inaction.

(2) No current medical staff member can provide the necessary expertise in the clinical procedure or area under review.

(3) Patient death.

(4) Wrong site procedure.



1 ~~(5) Wrong patient procedure.~~

2 ~~(6) To promote impartial peer review.~~

3 ~~(7) Upon the reasonable request of the licentiate.~~

4 ~~(e) A peer review body shall obtain external peer review for the~~  
5 ~~evaluation or investigation of an applicant, privilege holder, or~~  
6 ~~member of the medical staff in the following circumstances:~~

7 ~~(1) Three patient complaints regarding patient safety or standard~~  
8 ~~of care against a single licentiate in a 24-month period.~~

9 ~~(2) Three nursing complaints regarding patient safety or standard~~  
10 ~~of care against a single licentiate in a 24-month period.~~

11 ~~(3) Three colleague complaints regarding patient safety or~~  
12 ~~standard of care against a single licentiate in a 24-month period.~~

13 ~~(4) Annual billing of a single licentiate or medical group in~~  
14 ~~excess of the 90th percentile for Medicare or Medi-Cal.~~

15 ~~(5) Number of procedures or hospital admissions done by a~~  
16 ~~single licentiate or medical group per capita in excess of the 90th~~  
17 ~~percentile for the same specialty.~~

18 ~~(d) For purposes of this section, the following definitions apply:~~

19 ~~(1) "Peer review body" has the meaning provided in~~  
20 ~~subparagraph (A) of paragraph (1) of subdivision (a) of Section~~  
21 ~~805.~~

22 ~~(2) "External peer review" means peer review provided by an~~  
23 ~~external peer review organization pursuant to Section 809.08.~~

24 ~~SEC. 9. Section 809.08 is added to the Business and Professions~~  
25 ~~Code, to read:~~

26 ~~809.08. (a) An external peer review organization shall be a~~  
27 ~~nonprofit organization that is approved by the Medical Board of~~  
28 ~~California and that meets all of the following criteria:~~

29 ~~(1) Has no ownership interest in and is not involved in the~~  
30 ~~operation of a health facility, clinic, or peer review body, as defined~~  
31 ~~in Section 805, or in the delivery of health care services to patients.~~

32 ~~(2) Has provided review of and consultation to hospital medical~~  
33 ~~staffs with respect to quality improvement and peer review~~  
34 ~~activities for at least three years.~~

35 ~~(3) Maintains an available panel of California licensed healing~~  
36 ~~arts practitioners to perform peer review in at least one licensure~~  
37 ~~category who are credentialed by the external peer review~~  
38 ~~organization and who participate at least annually in a formal~~  
39 ~~educational training program provided by the external peer review~~  
40 ~~organization.~~

1     ~~(4) Maintains internal quality management programs to evaluate~~  
2     ~~the performance of its credentialed healing arts practitioners and~~  
3     ~~engages in continuing quality improvement activities, as~~  
4     ~~appropriate.~~

5     ~~(b) Within 10 calendar days of receiving a request from a peer~~  
6     ~~review body to provide external peer review pursuant to Section~~  
7     ~~809.07, the external peer review organization shall designate a fair~~  
8     ~~and impartial panel of healing arts practitioners qualified to~~  
9     ~~evaluate the clinical procedure or area at issue and shall provide~~  
10    ~~the peer review body a copy of each designated healing arts~~  
11    ~~practitioner's curriculum vitae.~~

12    ~~(c) After performing external peer review, the panel designated~~  
13    ~~pursuant to subdivision (b) shall recommend a course of action to~~  
14    ~~the peer review body. This recommended course of action may~~  
15    ~~include a recommendation that the licentiate, if a physician and~~  
16    ~~surgeon, participate in an early detection and resolution program~~  
17    ~~pursuant to Section 809.15.~~

18    ~~(d) Notwithstanding the recommendations made pursuant to~~  
19    ~~subdivision (c), the peer review body shall have the final decision~~  
20    ~~regarding whether to take disciplinary action against a licentiate.~~

21    ~~(e) The external peer review organization shall have the right~~  
22    ~~to establish and collect reasonable fees for its services. It is the~~  
23    ~~intent of the Legislature that these fees be payable by both the peer~~  
24    ~~review body and the licentiate subject to external peer review.~~

25    ~~(f) Except as provided in paragraph (1) of subdivision (a), "peer~~  
26    ~~review body," as used in this section, has the meaning provided~~  
27    ~~in subparagraph (A) of paragraph (1) of subdivision (a) of Section~~  
28    ~~805.~~

29    ~~SEC. 10. Section 809.09 is added to the Business and~~  
30    ~~Professions Code, to read:~~

31    ~~809.09. (a) The Legislature hereby finds and declares that the~~  
32    ~~sharing of information between peer review bodies is essential to~~  
33    ~~protect the public health.~~

34    ~~(b) A peer review body shall respond to the request of another~~  
35    ~~peer review body and produce the records requested concerning~~  
36    ~~a licentiate under review to the extent not otherwise prohibited by~~  
37    ~~state or federal law. The records produced pursuant to this section~~  
38    ~~shall not be subject to discovery, a subpoena, or a subpoena duces~~  
39    ~~tecum, and shall not be admissible as evidence in a court of law~~  
40    ~~in this state. The peer review body responding to the request shall~~

1 be entitled to all other confidentiality protections and privileges  
2 otherwise provided by law as to the information and records  
3 disclosed pursuant to this section.

4 SEC. 11. Section 809.1 of the Business and Professions Code  
5 is amended to read:

6 809.1. (a) A licentiate who is the subject of a final proposed  
7 action of a peer review body for which a report is required to be  
8 filed under Section 805 shall be entitled to written notice as set  
9 forth in subdivisions (b) and (c). For the purposes of this section,  
10 the “final proposed action” shall be the final decision or  
11 recommendation of the peer review body after informal  
12 investigatory activity or prehearing meetings, if any, including  
13 external peer review pursuant to Sections 809.07 and 809.08.

14 (b) The peer review body shall give the licentiate written notice  
15 of the final proposed action. This notice shall include all the  
16 following information:

17 (1) That an action against the licentiate has been proposed by  
18 the peer review body which, if adopted, shall be taken and reported  
19 pursuant to Section 805.

20 (2) The final proposed action.

21 (3) That the licentiate has the right to request a hearing on the  
22 final proposed action, except while he or she participates in or  
23 after he or she completes an early detection and resolution program  
24 pursuant to Section 809.15.

25 (4) The time limit, within which to request such a hearing, and  
26 an explanation that this time limit will be tolled pending completion  
27 of an early detection and resolution program pursuant to Section  
28 809.15.

29 (5) Whether the licentiate has the option of participating in an  
30 early detection and resolution program pursuant to Section 809.15.

31 (c) If a hearing is requested on a timely basis, the peer review  
32 body shall give the licentiate a written notice stating all of the  
33 following:

34 (1) The reasons for the final proposed action taken or  
35 recommended, including the acts or omissions with which the  
36 licentiate is charged.

37 (2) The place, time, and date of the hearing.

38 SEC. 12. Section 809.15 is added to the Business and  
39 Professions Code, to read:

1     ~~809.15.— (a) A peer review body shall administer an early~~  
2 ~~detection and resolution program (EDR) in which all of the~~  
3 ~~following occur:~~

4     ~~(1) The peer review body, where it deems appropriate, gives a~~  
5 ~~physician and surgeon, who is the subject of a final proposed action~~  
6 ~~for which an 805 report is required to be filed, the option of~~  
7 ~~completing EDR.~~

8     ~~(2) The peer review body requires the physician and surgeon~~  
9 ~~participating in EDR to do any of the following for a period of~~  
10 ~~time designated by the peer review body as a condition of~~  
11 ~~completion of EDR:~~

12     ~~(A) Be observed during patient care interventions by another~~  
13 ~~physician and surgeon.~~

14     ~~(B) Consult another physician and surgeon prior to implementing~~  
15 ~~a course of care.~~

16     ~~(C) Complete education or training designated by the peer~~  
17 ~~review body.~~

18     ~~(b) The peer review body acting pursuant to subdivision (a)~~  
19 ~~shall not file an 805 report for any action that resulted in referral~~  
20 ~~to EDR while a physician and surgeon participates in EDR or after~~  
21 ~~the physician and surgeon successfully completes EDR.~~

22     ~~(c) A physician and surgeon who successfully completes EDR~~  
23 ~~shall not be subject to any disciplinary action by the peer review~~  
24 ~~body acting pursuant to subdivision (a) or the board, as defined in~~  
25 ~~subdivision (j), for any action that resulted in referral to EDR.~~  
26 ~~However, participation in EDR shall not preclude the peer review~~  
27 ~~body or the board from investigating or continuing to investigate,~~  
28 ~~or from taking or continuing to take disciplinary action against, a~~  
29 ~~physician and surgeon for any unprofessional conduct that does~~  
30 ~~not serve as a basis for referral to EDR.~~

31     ~~(d) The time limit for filing an accusation under Section 2230.5~~  
32 ~~shall be tolled from the date on which a peer review body notifies~~  
33 ~~the board of the physician and surgeon's participation in EDR~~  
34 ~~under subdivision (f) until the date that the board receives notice~~  
35 ~~from the peer review body that the physician and surgeon failed~~  
36 ~~to successfully complete EDR under subdivision (f).~~

37     ~~(e) A physician and surgeon participating in EDR shall not~~  
38 ~~establish staff privileges at any new facility while participating in~~  
39 ~~EDR.~~

1     (f) A peer review body shall notify the board of a physician and  
2 surgeon's participation in EDR. A peer review body shall also  
3 provide that notification to health care facilities at which the  
4 physician and surgeon has staff privileges. The peer review body  
5 shall also notify the board and those health care facilities when  
6 that participation has ceased, including whether or not the physician  
7 and surgeon successfully completed EDR.

8     (g) A physician and surgeon may refuse to participate in EDR  
9 and request a hearing concerning the final proposed action under  
10 Section 809.2.

11     (h) Costs incurred in connection with EDR shall be the sole  
12 responsibility of the participating physician and surgeon.

13     (i) (1) Except for disclosures to the board and health care  
14 facilities required under subdivision (f), a peer review body shall  
15 not disclose information obtained in administering EDR that  
16 individually identifies patients, participants in EDR, individual  
17 health care professionals, peer review bodies, or their committees  
18 or members, or individual health care facilities. The proceedings  
19 or records of an assessment or training program pertaining to a  
20 physician and surgeon's participation in EDR shall not be subject  
21 to discovery, nor shall those records or proceedings be admissible  
22 in a court of law in this state.

23     (2) The prohibition on the discovery and admissibility of records  
24 and proceedings in paragraph (1) shall not apply to a physician  
25 and surgeon participating in EDR who contests a peer review  
26 body's determination that he or she failed to successfully complete  
27 EDR.

28     (j) For purposes of this section, the following definitions apply:

29     (1) "Board" means the Medical Board of California.

30     (2) "Physician and surgeon" means a physician and surgeon  
31 licensed by the board.

32     SEC. 13. Section 809.2 of the Business and Professions Code  
33 is amended to read:

34     809.2. If a licentiate timely requests a hearing concerning a  
35 final proposed action for which a report is required to be filed  
36 under Section 805, the following shall apply:

37     (a) The hearing shall be held before a trier of fact, and the  
38 licentiate shall have the choice of hearing by either of the  
39 following:

1     ~~(1) An arbitrator or arbitrators selected by a process mutually~~  
2     ~~acceptable to the licentiate and the peer review body.~~

3     ~~(2) A panel of unbiased individuals who shall gain no direct~~  
4     ~~financial benefit from the outcome, who have not acted as an~~  
5     ~~accuser, investigator, factfinder, or initial decisionmaker in the~~  
6     ~~same matter, and which shall include, where feasible, an individual~~  
7     ~~practicing the same specialty as the licentiate.~~

8     ~~(b) (1) If a hearing officer is selected to preside at a hearing~~  
9     ~~held before a panel, the hearing officer shall gain no direct financial~~  
10    ~~benefit from the outcome, shall disclose all actual and potential~~  
11    ~~conflicts of interest, shall not act as a prosecuting officer or~~  
12    ~~advocate, and shall not be entitled to vote. The hearing officer~~  
13    ~~shall also meet both of the following requirements:~~

14    ~~(A) Be mutually acceptable to the licentiate and the peer review~~  
15    ~~body. If the licentiate and peer review body are unable to agree,~~  
16    ~~they shall utilize the services of the American Arbitration~~  
17    ~~Association or other mutually agreed upon dispute resolution~~  
18    ~~organization.~~

19    ~~(B) Be an attorney licensed to practice law in the State of~~  
20    ~~California and qualified to preside over a quasi-judicial hearing.~~  
21    ~~An attorney or a law firm utilized by the hospital, the medical staff,~~  
22    ~~or the involved licentiate within the preceding two years shall not~~  
23    ~~be eligible.~~

24    ~~(2) The hearing officer shall endeavor to ensure that all parties~~  
25    ~~maintain proper decorum and have a reasonable opportunity to be~~  
26    ~~heard and present all relevant oral and documentary evidence. The~~  
27    ~~hearing officer shall be entitled to determine the order of, or~~  
28    ~~procedure for, presenting evidence and argument during the hearing~~  
29    ~~and shall have the authority and discretion to make all rulings on~~  
30    ~~questions pertaining to matters of law, procedure, or the~~  
31    ~~admissibility of evidence. The hearing officer shall also take all~~  
32    ~~appropriate steps to ensure a timely resolution of the hearing, but~~  
33    ~~may not terminate the hearing process.~~

34    ~~(c) The licentiate shall have the right to a reasonable opportunity~~  
35    ~~to voir dire the panel members and any hearing officer, and the~~  
36    ~~right to challenge the impartiality of any member or hearing officer.~~  
37    ~~Challenges to the impartiality of any member or hearing officer~~  
38    ~~shall be ruled on by the presiding officer, who shall be the hearing~~  
39    ~~officer if one has been selected.~~

1     ~~(d) The licentiate shall have the right to inspect and copy at the~~  
2 ~~licentiate's expense any documentary information relevant to the~~  
3 ~~charges which the peer review body has in its possession or under~~  
4 ~~its control, as soon as practicable after the receipt of the licentiate's~~  
5 ~~request for a hearing. The peer review body shall have the right~~  
6 ~~to inspect and copy at the peer review body's expense any~~  
7 ~~documentary information relevant to the charges which the~~  
8 ~~licentiate has in his or her possession or control as soon as~~  
9 ~~practicable after receipt of the peer review body's request. The~~  
10 ~~failure by either party to provide access to this information at least~~  
11 ~~30 days before the hearing shall constitute good cause for a~~  
12 ~~continuance. The right to inspect and copy by either party does~~  
13 ~~not extend to confidential information referring solely to~~  
14 ~~individually identifiable licentiates, other than the licentiate under~~  
15 ~~review. The arbitrator or presiding officer shall consider and rule~~  
16 ~~upon any request for access to information, and may impose any~~  
17 ~~safeguards the protection of the peer review process and justice~~  
18 ~~requires.~~

19     ~~(e) When ruling upon requests for access to information and~~  
20 ~~determining the relevancy thereof, the arbitrator or presiding officer~~  
21 ~~shall, among other factors, consider the following:~~

22         ~~(1) Whether the information sought may be introduced to~~  
23 ~~support or defend the charges.~~

24         ~~(2) The exculpatory or inculpatory nature of the information~~  
25 ~~sought, if any.~~

26         ~~(3) The burden imposed on the party in possession of the~~  
27 ~~information sought, if access is granted.~~

28         ~~(4) Any previous requests for access to information submitted~~  
29 ~~or resisted by the parties to the same proceeding.~~

30     ~~(f) At the request of either side, the parties shall exchange lists~~  
31 ~~of witnesses expected to testify and copies of all documents~~  
32 ~~expected to be introduced at the hearing. Failure to disclose the~~  
33 ~~identity of a witness or produce copies of all documents expected~~  
34 ~~to be produced at least 10 days before the commencement of the~~  
35 ~~hearing shall constitute good cause for a continuance.~~

36     ~~(g) Continuances shall be granted upon agreement of the parties~~  
37 ~~or by the arbitrator or presiding officer on a showing of good cause.~~

38     ~~(h) A hearing under this section shall be commenced within 60~~  
39 ~~days after receipt of the request for hearing, and the peer review~~  
40 ~~process shall be completed within a reasonable time, after a~~

1   licentiate receives notice of a final proposed action or an immediate  
2   suspension or restriction of clinical privileges, unless the arbitrator  
3   or presiding officer issues a written decision finding that the  
4   licentiate failed to comply with subdivisions (d) and (e) in a timely  
5   manner, or consented to the delay.

6   ~~SEC. 14.— Section 809.3 of the Business and Professions Code~~  
7   ~~is amended to read:~~

8   ~~809.3.— (a) During a hearing concerning a final proposed action~~  
9   ~~for which reporting is required to be filed under Section 805, both~~  
10   ~~parties shall have all of the following rights:~~

11   ~~(1) To be provided with all of the information made available~~  
12   ~~to the trier of fact.~~

13   ~~(2) To have a record made of the proceedings, copies of which~~  
14   ~~may be obtained by the licentiate upon payment of any reasonable~~  
15   ~~charges associated with the preparation thereof.~~

16   ~~(3) To call, examine, and cross-examine witnesses.~~

17   ~~(4) To present and rebut evidence determined by the arbitrator~~  
18   ~~or presiding officer to be relevant.~~

19   ~~(5) To submit a written statement at the close of the hearing.~~

20   ~~(6) To be represented by an attorney of the party's choice at the~~  
21   ~~party's expense, subject to subdivision (c).~~

22   ~~(b) The burden of presenting evidence and proof during the~~  
23   ~~hearing shall be as follows:~~

24   ~~(1) The peer review body shall have the initial duty to present~~  
25   ~~evidence which supports the charge or recommended action.~~

26   ~~(2) Initial applicants shall bear the burden of persuading the~~  
27   ~~trier of fact by a preponderance of the evidence of their~~  
28   ~~qualifications by producing information which allows for adequate~~  
29   ~~evaluation and resolution of reasonable doubts concerning their~~  
30   ~~current qualifications for staff privileges, membership, or~~  
31   ~~employment. Initial applicants shall not be permitted to introduce~~  
32   ~~information not produced upon request of the peer review body~~  
33   ~~during the application process, unless the initial applicant~~  
34   ~~establishes that the information could not have been produced~~  
35   ~~previously in the exercise of reasonable diligence.~~

36   ~~(3) Except as provided above for initial applicants, the peer~~  
37   ~~review body shall bear the burden of persuading the trier of fact~~  
38   ~~by a preponderance of the evidence that the action or~~  
39   ~~recommendation is reasonable and warranted.~~



1 ~~(e) No peer review body shall be represented by an attorney if~~  
2 ~~the licensee is not so represented, except dental professional~~  
3 ~~society peer review bodies may be represented by an attorney;~~  
4 ~~even if the licensee declines to be represented by an attorney.~~

5 ~~SEC. 15.~~

6 *SEC. 5.* Section 2027 of the Business and Professions Code is  
7 amended to read:

8 2027. (a) The board shall post on the Internet the following  
9 information in its possession, custody, or control regarding licensed  
10 physicians and surgeons:

11 (1) With regard to the status of the license, whether or not the  
12 licensee is in good standing, subject to a temporary restraining  
13 order (TRO), subject to an interim suspension order (ISO), or  
14 subject to any of the enforcement actions set forth in Section 803.1.

15 (2) With regard to prior discipline, whether or not the licensee  
16 has been subject to discipline by the board or by the board of  
17 another state or jurisdiction, as described in Section 803.1.

18 (3) Any felony convictions reported to the board after January  
19 3, 1991.

20 (4) All current accusations filed by the Attorney General,  
21 including those accusations that are on appeal. For purposes of  
22 this paragraph, “current accusation” shall mean an accusation that  
23 has not been dismissed, withdrawn, or settled, and has not been  
24 finally decided upon by an administrative law judge and the  
25 Medical Board of California unless an appeal of that decision is  
26 pending.

27 (5) Any malpractice judgment or arbitration award reported to  
28 the board after January 1, 1993.

29 (6) Any hospital disciplinary actions that resulted in the  
30 termination or revocation of a licensee’s hospital staff privileges  
31 for a medical disciplinary cause or reason. The board shall also  
32 post any exculpatory or explanatory statement regarding those  
33 hospital disciplinary actions provided by the licensee pursuant to  
34 subdivision (d) of Section 800.

35 (7) Any misdemeanor conviction that results in a disciplinary  
36 action or an accusation that is not subsequently withdrawn or  
37 dismissed.

38 (8) Appropriate disclaimers and explanatory statements to  
39 accompany the above information, including an explanation of  
40 what types of information are not disclosed. These disclaimers and

1 statements shall be developed by the board and shall be adopted  
2 by regulation.

3 (9) Any information required to be disclosed pursuant to Section  
4 803.1.

5 (b) (1) From January 1, 2003, the information described in  
6 paragraphs (1) (other than whether or not the licensee is in good  
7 standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain  
8 posted for a period of 10 years from the date the board obtains  
9 possession, custody, or control of the information, and after the  
10 end of that period shall be removed from being posted on the  
11 board's Internet Web site. Information in the possession, custody,  
12 or control of the board prior to January 1, 2003, shall be posted  
13 for a period of 10 years from January 1, 2003. Settlement  
14 information shall be posted as described in paragraph (2) of  
15 subdivision (b) of Section 803.1.

16 (2) The information described in paragraphs (3) and (6) of  
17 subdivision (a) shall not be removed from being posted on the  
18 board's Internet Web site. Notwithstanding the provisions of this  
19 paragraph, if a licensee's hospital staff privileges are restored and  
20 the licensee notifies the board of the restoration, the information  
21 pertaining to the termination or revocation of those privileges, as  
22 described in paragraph (6) of subdivision (a), shall remain posted  
23 for a period of 10 years from the restoration date of the privileges,  
24 and at the end of that period shall be removed from being posted  
25 on the board's Internet Web site.

26 (c) Notwithstanding *subdivision (a) or* paragraph (2) of  
27 subdivision (b), the board shall remove and shall not post the  
28 information described in paragraph (6) of subdivision (a) if a court  
29 reverses the hospital disciplinary action or if the board's  
30 independent investigation exonerates the licensee from the charges  
31 forming the basis of the hospital disciplinary action.

32 (d) The board shall provide links to other Web sites on the  
33 Internet that provide information on board certifications that meet  
34 the requirements of subdivision (b) of Section 651. The board may  
35 provide links to other Web sites on the Internet that provide  
36 information on health care service plans, health insurers, hospitals,  
37 or other facilities. The board may also provide links to any other  
38 sites that would provide information on the affiliations of licensed  
39 physicians and surgeons.

1     ~~SEC. 16.~~

2     *SEC. 6.* Section 2191.5 is added to the Business and Professions  
3 Code, to read:

4     2191.5. The board shall adopt and administer standards  
5 allowing a physician and surgeon to receive credit for up to 10  
6 hours of continuing education each year for participating in a peer  
7 review body without compensation. For purposes of this section,  
8 “peer review body” has the same meaning as that term is defined  
9 in Section 805.

O